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I Accuse Myself: The Unintentional Weaponising of Reflection in a Disciplinary Context

**Centre for Legal Education Conference 2026 Professor Jane Jarman,
Solicitor**

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“

I have done ill;
of which I do accuse myself so
sorely,
That I will joy no more.

Antony & Cleopatra Act IV Scene vi

”



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“We do not learn from experience ... we learn from reflecting on experience.”



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Reflection: Challenges in Operation

- Learning and Development
- Regulatory and Compliance
- Insurance
- Disciplinary and misconduct



Reflection vs Rumination (Lengelle, 2016)

Reflection

- Insight into behaviour
- Problem solving
- Ability to reflect on incidents, both positive and negative, to support practice and develop insight
- Aid to resilience

Rumination

- Negative state
- Can be driven by fear/potential for blame
- Can drift into rumination from self reflection where there is a failure to look to solutions and future action

Problems associated with reflection and its artefacts

Assessment

“rather than revealing and developing a true and unitary self, reflecting online and for assessment produces fragmentary, performing, cautious, strategic selves” (Ross 2011)

Compliance/Regulatory/Disciplinary

Is the same true of a different type of “assessment” in terms of regulatory compliance (declaration) or evidence in support of fitness to practice or other disciplinary actions?

Reflection under pressure: fight or flight

“Taking a constructive approach to reflection is clearly in the interests of doctors who may face criticism, but there are some potential pitfalls in the process that should be avoided...”

In the stress of the moment doctors may react in a way that could be unhelpful in the long term. Instinct may trigger a “fight or flight” response.

Some doctors might feel threatened and will defend their actions vigorously and unceasingly, meaning they could miss opportunities to learn. A doctor who appears to be failing to reflect properly could be criticised for lacking insight, making an employer or regulator consider them a risk to patients.

Doctors may also want to admit fault in order to avoid confrontation, or possibly out of a sense of guilt. A doctor who accepts all criticisms without proper consideration also loses an opportunity to learn and is more likely to become disheartened. They may decide to change their practice unnecessarily and without any evidence, which could lead to overwork and burnout. The proper, safer, and more balanced approach is to consider the incident or criticism objectively and look for any learning points.

(Davies & Kremer, Reflection: Reducing the Risks, BMJ, 2016)



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***“Whatever You Say, Say
Nothing.”***

Seamus Heaney, *North* (1975)

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Perception of reflection risk: The Bawa-Garba case

- Facts: criminal trial for manslaughter and GMC 'fitness to practice' case surrounding a failure to diagnose sepsis in a 6 year old boy
- *Perception* only that reflections from Dr Bawa-Garba's e-portfolio were used at trial (this was not the case – they were not deemed relevant evidence by the court)
- The potential chilling effect of the course on the use of e-portfolio SEAs (Significant Event Analyses) investigated by Emery et al based on a small study of trainee GPs in South Yorkshire as trainees and trainers disengaged from reflective e –portfolios to reduce the risk of self-incrimination.

Emery, Jackson & Herrick (2021)

Trainee

I think it has changed everybody's practice as to what they put in an e portfolio...because nobody wants to get struck off, nobody wants to go to jail because of what they feel was meant to be helping them,,,,,

Trainer

I think there needs to probably be very clear guidance from the GMC and BMA as to, this reflection cannot and will not be used in court, under any circumstances because otherwise you're stuffed



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Employee Dismissal and Failure of Insight



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Hewson v OFSTED [2025]

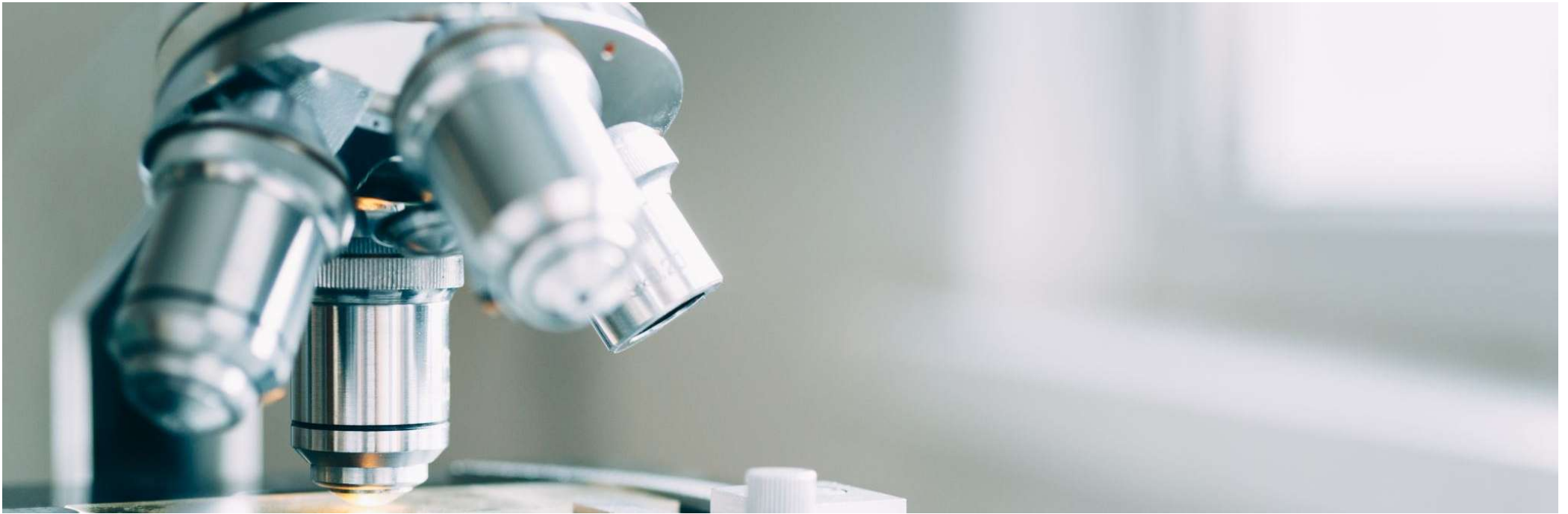
- Dismissal letter:
 - “a lack of self-awareness, failure to reflect and a lack of contrition”
 - “concerning lack of contrition and reflection on [his] actions...[and in the absence of any] recognition of any wrongdoing”
- ET Decision: Dismissed Hewson’s claims of unfair and wrongful dismissal (but did suggest that further training might have been more appropriate)
- EAT Decision: Appeal allowed - “if it would not...be open to the employer dismiss.... for the [conduct], then the absence of [insight, contrition or reflection] cannot render that sanction fair”.

Underhill, LJ

- “I find it hard to see how in such a case it could be reasonable for the employer to ***bump up the seriousness of the conduct only because the employee fails during the disciplinary process to show proper contrition or insight***...How employees react to an allegation of misconduct is likely to vary greatly according to individual treatment and the dynamics of the particular situation. ***The stressful circumstances of a disciplinary hearing or interview are unlikely to be conducive to calm self-reflection, and it is inevitable that some employees will be overly defensive***. In some cases also, where the issue is whether what was done constituted gross misconduct, an employee who genuinely believes that it did not faces the dilemma that if they say that they would not do the same thing again they may be taken to be accepting guilt.”



Mandated Reflection: SRA Annual Declaration and reflective forensics?



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“I have reflected on my practice and addressed any identified learning and development needs.”

SRA Practising Certificate Renewal (personal and ‘bulk’ applications)

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Professional Indemnity Insurance



- Bespoke insurance for professionals
- Duty of fair presentation – s 3 Insurance Act 2015
- Claims Made Policies: Claims that are first made against the insured and notified to the relevant PI insurer during the indemnity year
 - Notification is the trigger – claims and circumstances amounting to a claim
- Usually subject to some basic minimum terms agreed with a regulator, if compulsory
 - “adequate and appropriate” or
 - arrangements such as SRA Minimum Terms and Conditions (MTC),
- The Declaration Opportunity and “trap” of “anything known”



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Typical PI policy wording: insured obligations

“1. We will not make any payment under this section unless you notify us of the following promptly and within the period of insurance, or at the latest within 14 days after it expires for any problem you first become aware of in the seven days before expiry:

(a)

your first awareness of anything, including any ***actual or alleged shortcoming*** in your work, which is likely to lead to a claim against you. ***This includes any criticism of your work even though regarded by you as unjustifiable.***

If we accept your notification we will regard any subsequent claim as notified to this insurance;”



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Conclusions and....

- **Reflection has been accepted (and sometimes mandated)** by professions and their regulators for **learning and development purposes** (subject to criticism in terms of assessment), but it is **out of phase with other aspects**, such as regulatory and enforcement, leading to a credibility/efficacy/risk gap:
- Outside the L&D, there can be an **unintentional weaponising of reflection** in a disciplinary context either by *misapplication/misinterpretation* (Hewson) or by *perception* (Bawa Garba);
- **The infrastructure that supports professional practice**, such as declarations for practice or insurance, **presents problems of potential *reflective forensics*** of what a professional “knew or should have known” at critical points (insurance/PC renewal) as part of compliance and a fair presentation to insurers consistent with s 3 Insurance Act 2015.

...possible solutions

- **Counterbalance the risk of ‘reflective forensics’** with an adaptive form of ‘**confidentiality club**’ for reflective artefacts
- Develop the concept of ‘**reflective infrastructure**’ aligned to the ideas of culture and learning of the organisation, as well as at the level of the individual
 - Drive reflection beyond learning and development silo into service delivery and compliance frameworks
- **Invest in reflection as a form of financial risk mitigation**
 - Code with activity codes to give permission for reflection space
 - Align insurance (PI/EO/EL) with premium adjustments for good practice



A reflective infrastructure?

“It’s easy to talk about professional ethics. But the truth is that the ***integrity of individual practitioners and the ethical infrastructure of their organisations*** is crucial for maintaining public confidence in the rule of law as well as for protecting consumer...”

Chris Kenny, Legal Services Board

5 September 2012

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Thank you